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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:10-CR-00510-JO

v.

**GOVERNMENT'S MEMORANDUM
OF LAW RE COMPETENCY OF THE
DEFENDANT**

MOISES LOPEZ-PRADO,

Defendant.

The United States of America, by and through S. Amanda Marshall, United States Attorney, and Thomas H. Edmonds, Assistant United States Attorney, hereby sets forth a memorandum of law, applying to the hearing this court will conduct regarding defendant's competency to proceed.

INTRODUCTION

The defendant has moved the court to determine competency pursuant to 18 U.S.C. § 4241 (b). CR 64. Defendant was evaluated by his own psychologist, Les Goldmann, Ph.D., in support of that motion. The government then moved for evaluation, pursuant to 18 U.S.C. § 4241 (b) and (c). This court ordered defendant's commitment for psychological evaluation. CR

73. On December 13, 2012, Tiffany K. Brown, Psy.D., *see* Gov. Ex. 1 (CV of Dr. Brown), provided her report to the court and the parties. *See* Gov. Ex 2 (report)¹. The court will conduct a hearing of this matter on January 23, 2013, at 1:30 p.m.

STANDARDS

A. Standard of Proof

Under 18 U.S.C. §4241(d), the Court evaluates the proof offered under a preponderance standard; thus, defendant Lopez-Prado is competent to proceed unless this Court finds by a preponderance of the evidence that he suffers from a current mental illness which prevents him from being able to consult with his lawyer and assist in his defense.

B. Burden of Proof

The United States Supreme Court has indicated that the criminal defendant bears the burden of proof on this question. *Cooper v. Oklahoma*, 517 U.S. 348, 362 (1996). Prior to 1996, the law in the Ninth Circuit was that the government bore the burden of proof in a competency hearing. *See United States v. Chischilly*, 30 F.3d 1144, 1150 (9th Cir. 1994); *United States v. Hoskie*, 950 F.2d 1388, 1392 (9th Cir. 1991) (citing cases). In 1996, however, the United States Supreme Court decided *Cooper*. In considering the standard of proof for determining a defendant's competency under an Oklahoma state law, the Court stated: "Congress has directed that the accused in a federal prosecution must prove incompetence by a preponderance of the evidence." 517 U.S. at 362 (citing to 18 U.S.C. § 4241). Thus, defendant Lopez-Prado bears the burden of establishing incompetency.

¹ Exhibits to be advanced to the court at time of hearing and offered into evidence.

C. Legal Standard

The statutory test for competency to stand trial is whether the defendant “is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” 18 U.S.C. § 4241(d); *Cooper v. Oklahoma*, 517 U.S. at 354 (test is whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him.”); *Drope v. Missouri*, 420 U.S. 162, 171 (1975) (“[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial”); *Dusky v. United States*, 362 U.S. 402, 402 (1960) (*per curiam*) (the test for competency “must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him”); *Miles v. Stainer*, 108 F.3d, 1109, 1112 (9th Cir. 1997) (“Competence is defined as the ability to understand the proceedings and to assist counsel in preparing a defense.”); *see* 18 U.S.C. § 4241(a). “In performing its fact-finding and credibility functions, a district court is free to assign greater weight to the findings of experts produced by the Government than to the opposing opinions of the medical witnesses produced by the defendant.” *United States v. Frank*, 956 F.2d 872, 875 (9th Cir.1992).

D. Government's Evidence

The government will call Dr. Tiffany Brown, who will testify to the matters and opinion rendered in her December 13, 2012, report. The government notes that her report is an exhaustively thorough accounting of this defendant's competency. Of particular note will be the contrast between the testing mechanisms used by Dr. Brown as compared with those utilized by Dr. Les Goldmann, the defense witness. Also of note is the contrast between defendant's performance on certain tests and his self-reported history/observations made of defendant while under examination the Bureau of Prison facility in Los Angeles.

Respectfully submitted,

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s/ Thomas H. Edmonds

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